

United States Bankruptcy Court
Western District of Michigan

One Division Ave., NW
Room 200
Grand Rapids, MI 49503

IN RE: Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Terry Allen Wade
1739 Scenic Oak Lane
Muskegon, MI 49445
SSN: xxx-xx-2933
Tamara Jo Wade
1739 Scenic Oak Lane
Muskegon, MI 49445
SSN: xxx-xx-7710

Debtor(s)

Case Number 05-18551-jrh

Chapter 7

Honorable Jeffrey R. Hughes

NOTICE OF HEARING
JOINT MOTION OF TRUSTEE AND DEBTORS FOR ORDER APPROVING SALE
OF PROPERTY OF THE ESTATE

The above motion has been filed with the Bankruptcy Court. Your rights may be affected. **You should read these papers carefully and discuss them with your attorney. (If you do not have an attorney, you may wish to consult one.)**

If you want the court to consider your views on this matter, attend the hearing scheduled to be held before the Hon. Jeffrey R. Hughes on June 1, 2006 at 1:30 pm at One Division Ave, N.W., 3rd Floor, Courtroom C, Grand Rapids, MI 49503

You or your attorney may wish to file a response explaining your position. Such response should be received at least three business days prior to the scheduled hearing. A copy should also be served upon the party who has filed the motion to his/her attorney. **Please refer to Administrative Order 2004-06 (Mandatory Electronic Filing), effective January 1, 2005, for practices and procedures for filing pleadings with the Court.**

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

PLEASE NOTE: NOTICE IS HEREBY GIVEN that the court may, in its discretion, orally continue or adjourn the above hearing on the record in open court. If this occurs, parties in interest will not be given further written notice of the continued or adjourned hearing. If an entity is not present at the originally scheduled hearing, information regarding the time, date and place of an orally continued or adjourned hearing may be obtained at the Clerk's office from the court files or docket.

This Notice has been returned to Andrew J. Gerdes. It is Andrew J. Gerdes (s'/s) responsibility to ensure that service of this Notice and the referenced Motion is made upon the appropriate parties not less than twenty (20) days prior to the date of hearing. (sc)



DANIEL M. LAVILLE
CLERK OF BANKRUPTCY COURT

/S/ _____
Shelli Combs
Deputy Clerk

Dated: April 28, 2006

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In Re:

Case No. HG 05-18551

**TERRY ALLEN WADE and
TAMARA JO WADE,**

Chapter 7; Filed: 10/14/05

Debtors.

Honorable Jeffrey R. Hughes

**JOINT MOTION OF TRUSTEE AND DEBTORS FOR ORDER
APPROVING SALE OF PROPERTY OF THE ESTATE**

The Chapter 7 Trustee, Jeff A. Moyer, by and through his counsel, Andrew J. Gerdes, PLC, and Debtors Terry Allen Wade and Tamara Jo Wade, state as their Joint Motion to the Court the following:

1. Terry Allen Wade and Tamara Jo Wade (“Debtors”) filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on October 14, 2005.
2. Jeff A. Moyer is the duly-appointed, qualified and acting Trustee in the Chapter 7 case.
3. Debtors listed on Schedule B of their petition an interest in a Michigan limited liability company known as Gabriel Properties, LLC (“Gabriel Properties”). Mrs. Wade is the sole member of Gabriel Properties.
4. Gabriel Properties owns real property located in Muskegon Township, Muskegon County, Michigan that is the subject of this Motion and which is commonly known as 2211 East Apple Avenue, Muskegon, Michigan and is legally described as follows:

The West 62 feet of the North 150 feet of Lot 9, Home Gardens, according to the recorded plat thereof, as recorded in Liber 6 of Plats, Pages 36 and 37, Muskegon County Records.

(the “Real Property”).

5. Aleia, Ltd. is a Michigan corporation of which Mr. Wade is the sole officer, director and shareholder. Aleia is the tenant at the Real Property which it uses to operate a Speedy Lube oil change franchise.

6. Initially, Debtors collectively claimed an exemption in their interest in Gabriel Properties in the amount of \$19,149.00, to which the Trustee timely objected. In conjunction with this Motion, Debtors and the Trustee have agreed that Debtors will limit their exemption in Gabriel Properties to \$6,000.00 (to be attributable to Mrs. Wade only) and that Mr. Wade may exempt one-half of certain amounts owing to the Debtors by Gabriel Properties as explained below. The Debtors have now amended their Schedules B and C filed with the Court to reflect this agreement.

The Proposed Sale Agreement

7. Gabriel Properties (as seller), Aleia (as tenant) and Paul Czekuc (as purchaser), have entered into an agreement for the purchase and sale of the Real Property for \$130,000 (the "Sale Agreement"). A true and accurate copy of the Sale Agreement is attached as Exhibit A.

8. The proposed purchaser, Mr. Czekuc (the "Purchaser"), is also the franchisor for Aleia.

Creditors of Gabriel Properties

9. From the sale proceeds, all the creditors of Gabriel Properties (including the secured creditors) would have to be paid in full before Mrs. Wade individually or the estate could realize anything. The movants anticipate that, after paying all of Gabriel Properties' creditors, and paying Mrs. Wade her agreed exemption of \$6,000.00, there will be funds available to distribute to creditors of the bankruptcy estate.

10. Huntington National Bank holds a first-priority mortgage on the Real Estate. As of the date of this Motion, the balance owing to the bank is approximately \$92,000.00.

11. Mr. Czekuc, the proposed purchaser, holds an unsecured claim against Gabriel Properties for real property taxes he paid on its behalf in the amount of \$2,783.00. If Mr. Czekuc is the successful purchaser of the Real Property, his claim against Gabriel Properties will be paid by a credit taken against the purchase price.

12. Debtors have advised the Trustee that they hold claims against Gabriel Properties for amounts paid on its behalf in the amount of approximately \$2,400. In conjunction with the Trustee supporting and requesting approval of the Sale Agreement, Mr. Wade will be allowed to exempt one-half of the amount owing to the Debtors; Mr. Wade filed an amended Schedule C on April 25, 2006 to claim that exemption. Mrs. Wade's one-half of the Debtors' claim against Gabriel Properties will be retained by the Trustee.

13. The Trustee will take control of the net sale proceeds to pay any creditors of Gabriel Properties after which the Debtors' exemptions in such amounts will be paid.

Request for Relief

14. Debtors and the Trustee are jointly seeking approval of the Sale Agreement. Except for the requirement of a warranty deed from Gabriel Properties to the successful purchaser, the Real Property shall be sold on an "as is" and "where is" basis and no warranty is being made as to the usability, fitness for a particular purpose, zoning, suitability, inhabitability, environmental quality, chain of title, or any other matter. Notwithstanding the immediately preceding sentence, the Trustee is specifically disclaiming any and all warranties and representations whatsoever regarding the Real Property. The proposed purchaser or any other proposed purchasers are entirely responsible for viewing the Real Property, determining its suitability and value, and calculating its or their bid.

15. This sale shall be subject to the approval of the United States Bankruptcy Court for the Western District of Michigan. Upon approval of the sale, a closing shall be held as soon

as possible after the 10-day appeal period has run. Such closing date shall be determined by the Trustee and purchaser and/or successful high bidder, and may be extended only in writing by the mutual agreement of the purchaser and/or successful high bidder and the Trustee.

16. Time is of the essence. The Purchaser has committed to the Sale Agreement provided he obtains possession of the Real Property promptly. In addition, interest continues to accrue on Huntington National Bank's loan to Gabriel Properties, further eroding the value of the estate's interest in the Real Property.

17. The Trustee believes that approval of the sale as outlined above is in the best interests of the estate and that it should be approved.

18. Any objections to this sale must be made in writing, and shall be filed with the Bankruptcy Court with a copy served upon counsel for the Trustee at the address set forth below. Any objections must be filed and served no later than three (3) business days prior to the date of the hearing on the approval of the sale.

19. The Trustee further requests that the Real Property be noticed out to the Buyers' List for review, consideration and possible bid.

20. The Trustee shall solicit and accept additional bids on the Real Property. Any additional bids must be cash bids, on these terms, with the first successive bid to be in the amount of at least \$132,000, and bid increments to be set in the discretion of the Trustee. No other offer on any other terms shall be considered. Any successful bidder, other than the Purchaser, must provide a deposit of \$10,000 to the Trustee within one (1) day of the entry of an order approving the sale to such bidder. The Trustee shall have the discretion to determine what constitutes the highest and best offer for the Real Property.

21. The Trustee also seeks authority to take any steps necessary to dissolve or wind up the affairs of Gabriel Properties as the Trustee determines, in his discretion, are necessary to allow the bankruptcy estate to realize on the value of Gabriel Properties.

WHEREFORE, the Trustee, Jeff A. Moyer, and the Debtors request the Court enter an Order in the form of Exhibit B granting the following relief:

- A. Authorize Jeff Moyer and Debtors to sell the Real Property as outlined above,
- B. Schedule a hearing on the approval of the sale as soon as the Court's docket permits, and
- C. Grant such other, further or different relief as may be just and equitable under the circumstances.

Respectfully submitted,

ANDREW J. GERDES, PLC
Attorneys for Jeff A. Moyer, Chapter 7 Trustee
of Terry Allen Wade and Tamara Jo Wade

Dated: April 27, 2006

By: /s/ Andrew J. Gerdes
Andrew J. Gerdes (P47593)
Business Address:
1500 Abbott Road, Suite 105
P.O. Box 4190
East Lansing, MI 48826-4190
(517) 853-1300
agerdes@tds.net

and

TERRY ALLEN WADE and
TAMARA JO WADE
Debtors

Dated: April 27, 2006

By: /s/ Terry Allen Wade
Terry Allen Wade

Dated: April 27, 2006

By: /s/ Tamara Jo Wade
Tamara Jo Wade
Address:
1739 Scenic Oak Lane
Muskegon, MI 49445

PURCHASE AGREEMENT

This Agreement is effective March __, 2006, between **Paul Czekuc or his assignee** of 4600 Maple Island Road, Ravenna Michigan 49451 ("Buyer"), **Gabriel Properties, L.L.C.**, a Michigan limited liability company of 1739 Scenic Oak Lane, Muskegon, Michigan 49445 ("Seller") and **Aleia, Ltd.**, a Michigan corporation of 2211 East Apple Avenue, Muskegon, Michigan 49442 ("Tenant") with reference to the following facts:

Background

A. Seller owns a certain parcel of improved commercial property 2211 East Apple Avenue, including a commercial building and other improvements in Muskegon Township. Tenant currently leases such property from Seller at which it operates a Speedy Lube franchise.

B. Buyer has agreed to purchase and Seller has agreed to sell the property to Buyer according to the terms and conditions of this Agreement.

It is therefore agreed as follows:

1. **General Agreement and Description of Premises.** Seller shall sell and Buyer shall purchase, on the conditions set forth in this Agreement, a certain parcel of real estate located in Muskegon Township, Muskegon County, Michigan, legally described as follows:

The West 62 feet of the North 150 feet of Lot 9, Home Gardens, as recorded in Liber 6 of Plats, Pages 36 and 37, Muskegon County Records.

together with all buildings and improvements, located thereon as of the Date of Closing (as defined herein), together with all beneficial easements and division rights, and with all of Seller's right, title and interest in all mineral and surface rights ("Premises").

2. **Purchase Price and Manner of Payment.** The purchase price for the Premises is One Hundred Thirty Thousand and 00/100 Dollars (\$130,000). Buyer shall receive a credit against the purchase price in the amount of \$2,783 for real property taxes paid by Buyer prior to Closing. At closing, and upon execution and delivery of a warranty deed and all other documents of transfer, Buyer will pay the balance of the purchase price to Seller by Title Company check.

3. **Title Insurance.** Buyer shall order a commitment for owner's policy of title insurance issued by Land America Transnation Title Insurance Company (the "Title Company") in the standard A.L.T.A. form, without the standard exceptions, certified to the Date of Closing, in the amount of the purchase price that shows that Seller has good and marketable title to the Premises. The title insurance policy shall include a tax lien search certified to the Date of Closing that shows no tax liens against the Premises and that all property taxes relative to the Premises are paid in full.

4. **Objections to Condition of Title.** Buyer may raise objections to the exceptions, requirements or encumbrances shown on the commitment at any time prior to closing by delivering notice to Seller. If Buyer raises a title objection, Seller shall take action, at or prior to closing, to remove the exception or the encumbrance from the chain of title, in order to remove it from the commitment and the policy. If Seller is unable or unwilling to remove the objectionable exception or encumbrance at or prior to closing, Buyer may elect to take action to remove the exception or encumbrance from the chain of title, waive its objection and close subject to such exception or encumbrance, or Buyer may terminate this Agreement. Seller shall allow for a reasonable time to Buyer to obtain clear title to the Premises.

5. **Property Taxes.** Taxes shall be pro-rated to the Date of Closing using the calendar year method of pro-ration (all taxes billed or to be billed in the year of closing). Calendar year tax levies will be estimated, if necessary, using the taxable value and the millage rate(s) in effect on the Date of Closing, broken down to a per diem tax payment and pro-rated to the date of closing with Seller paying for January 1 to the date of closing.

6. **Assessments.** Seller shall pay any existing special assessments that are due and payable, or a lien or both, on the Premises at or prior to closing.

7. **Survey.** Buyer may obtain a survey of the Premises, and Buyer or Buyer's surveyor or other agents may enter the Premises for that purpose prior to closing. In the event that a survey by a registered land surveyor made prior to closing discloses an encroachment or substantial variation from the presumed land boundaries or area, Seller shall have the option of effecting a remedy within 30 days after disclosure, or Seller may terminate this Agreement.

8. **Representations and Warranties.** Seller and Tenant represent and warrant to Buyer as follows:

a. **Authority.** Seller and Tenant have full authority to enter into and perform this Agreement in accordance with its conditions, without breaching or defaulting on any obligation or commitments that Seller has to municipalities, lenders or any third party.

b. **Other Agreements.** Neither Seller nor Tenant are a party to any agreement or otherwise bound under any obligation with any other party who has any interest in the Premises or the right to purchase or lease the Premises.

c. **Entire Interest.** Seller's entire interest in the Premises will be transferred to Buyer at the closing, free and clear of all liens, encumbrances, charges, and adverse claims, contractual or otherwise, including any and all mineral, surface and division rights.

d. **Litigation.** There are no suits, actions, or proceedings pending or, to the best of Seller's or Tenant's knowledge, threatened, by any party, including governmental authorities or agencies, against or involving the Premises, or to which Seller is or may become a party in connection with the Premises.

e. **Other Property.** Seller does not own any property abutting or contiguous with the Premises.

f. **No Violations or Obligations.** Except as disclosed in writing to, and accepted by Buyer, there are, and shall be, no uncured violations or unsatisfied obligations with any governmental authority, including, without limitation, environmental violations, of any laws, ordinances, orders, regulations, rules or requirements of any governmental authority, affecting the Premises or any part thereof.

g. **UST's.** To the best of Seller's and Tenant's knowledge, there are no underground storage tanks or underground storage tank systems on, in or under the Premises.

h. **Encroachments.** To the best of Seller's knowledge, there are no encroachments onto the Premises from property bordering the Premises and no portion of the landscaping materials planted on the Premises encroach on the property adjacent to the Premises.

i. **Accuracy.** All statements and information relating to the Premises provided to Buyer are true and accurate.

j. **Survival.** All such representations and warranties shall survive the delivery of the warranty deed.

9. Inspection Period.

a. **Due Diligence Investigation.** Upon Seller's execution of this Agreement, Buyer, and Buyer's agents, employees, contractors and consultants may, prior to the Date of Closing, conduct such inspections, investigations, appraisals, tests, feasibility studies, and determinations of the Premises as Buyer, in its sole discretion, shall desire in order to determine that the condition of the Premises is acceptable and that the Premises is suitable for Buyer's intended uses ("Due Diligence Investigation"). The Due Diligence Investigation shall include, but shall not be limited to, inquiring as to the existence and/or adequacy of electrical, plumbing, sewer, water and other utility services, public services and access; insuring as to applicable zoning ordinances, use regulations and business codes; conducting soil tests of the Premises, borings and other engineering and architectural tests; evaluation of the environmental conditions which exist at the Premises (including, if desired by Buyer, a Phase I and Phase II environmental site assessment and a baseline environmental assessment) and Seller's compliance with all applicable state and federal environmental laws and regulations. Buyer shall pay the cost of the Due Diligence Investigation. The Due Diligence Investigation shall begin on the effective date of this Agreement and shall continue for a period of ninety (90) days ("Inspection Period").

b. **Submittals to MDEQ.** Within seven (7) days after Seller's execution of this Agreement, Seller shall provide Buyer with a copy of any other results, data or reports of the environmental condition of the Premises in Seller's possession or control. Seller acknowledges that during the Inspection Period or at any time consistent with regulations before or after Date of Closing, Buyer may make a petition to the Michigan Department of Environmental Quality ("DEQ") for a baseline environmental assessment ("BEA") adequacy determination, or at the option of Buyer, may disclose the results of the BEA to the DEQ without such a petition.

10. Buyer's Right to Terminate. At any time during the Inspection Period, if Buyer should, in its sole opinion, determine that the condition of the Premises is not acceptable or that the Premises is not suitable for all of its intended uses, Buyer shall provide Seller with written notice thereof, and Buyer may, in its sole discretion, terminate this Agreement, and this Agreement shall thereafter be of no further force or effect.

11. Real Estate Commission. Buyer and Seller both acknowledge and agree that neither has dealt with any real estate agents, brokers or salespersons regarding this sale, and that no agent, broker, salesperson or other party is entitled to a real estate commission upon the closing of this sale. Buyer and Seller both agree to indemnify and hold the other harmless from any liability, including reasonable attorney fees, occasioned by reason of any person or entity asserting a claim for a real estate commission arising from actions taken by the other party.

12. Closing.

a. **Date of Closing.** Unless the parties otherwise mutually agree, the closing shall be held within thirty (30) days from the expiration of the Inspection Period unless additional time is need to resolve title issues as described in paragraph 4 ("Date of Closing"). The closing shall be held at the offices of the Title Company

b. **Costs.** The costs associated with this Agreement and the closing shall be paid as follows:

i. Seller shall pay all state and county transfer taxes in the amounts required by law.

ii. Seller shall pay the premium for the owner's policy of title insurance. Buyer shall pay for any lenders policy of title insurance.

iii. Buyer shall pay for the cost of recording the warranty deed.

iv. Seller shall be responsible to pay for the recording of any instrument that must be recorded to clear title to the extent required by this Agreement.

v. Buyer and Seller shall each pay one-half of any closing fees charged by the Title Company.

c. **Deliveries.** At closing, Seller shall deliver, in a form reasonably satisfactory to Buyer and the Title Company, a Warranty Deed to the Premises and such other documents as may be reasonably required by Buyer or the Title Company to effectuate the transaction contemplated by this Agreement.

13. **Possession.** Possession of the Premises is to be delivered to Buyer by Seller at closing.

14. **Notice.** All notices, approvals, consents and other communications required under this Agreement shall be in writing and, except when receipt is required to start the running of a period of time, shall be deemed given: (i) when delivered in person; (ii) when sent by fax (the sender shall also send an original, signed copy following the fax; however, the notice shall be effective upon the transmission of the fax); (iii) one day after depositing in the custody of a nationally-recognized receipted overnight delivery service with delivery fees prepaid; or (iv) five days after posting in the United States Mail first-class, registered, or certified mail, postage prepaid and return receipt requested. Notices shall be sent to the parties as follows:

To Buyer: Paul Czekuc
4600 Maple Island Road
Ravenna Michigan 49451
Fax: 231. 788.5927

w/copy to: The Law Offices of Parmenter O'Toole
175 W. Apple Avenue
Muskegon, Michigan 49443
Att: John M. Briggs, III
Fax: 231.722.7866

To Seller: Gabriel Properties, L.L.C.
a Michigan limited liability company
1739 Scenic Oak Lane
Muskegon, Michigan 49445
Fax: 231.719-0381

To Tenant: Aleia, Ltd.
a Michigan limited liability company
211 East Apple Ave.
Muskegon, Michigan 49442
Fax: 231.719-0381

15. Remedies. The parties acknowledge and agree that it would be difficult to measure actual damages to Buyer from any breach by Seller of the covenants, restrictions, representations and warranties set forth in this agreement and that the injury to Buyer from any breach would be incalculable and irremediable and the damages would not therefore in and of themselves be an adequate remedy. The parties therefore agree that in the event Seller shall breach or attempt to breach any of the terms of this Agreement, including Seller's representation of warranties, Buyer shall be entitled as a matter of right to obtain from any court of competent jurisdiction an injunction prohibiting Seller from any further breaches of this Agreement, rescinding any action taken by Seller contrary to the terms of this Agreement. Nothing in this paragraph shall limit Buyer's right to pursue any remedy, and Buyer may seek money damages for any breach of this Agreement, including actual damages and lost fees, commissions, income, profits or other remuneration or gain to which Buyer would have been entitled absent Seller's breach and Buyer may offset such damages against any obligation of Buyer to Seller. In addition, Buyer shall be entitled to collect from Seller, all Buyer's costs incurred in connection with the enforcement of this Agreement, including Buyer's reasonable attorney fees.

16. Termination of Lease and Franchise Agreement. On or before Closing, Tenant and Seller shall sign an agreement to terminate Tenant's lease for the Premises in a form reasonably acceptable to Buyer. Tenant also agrees to terminate his franchise agreement with Speedy Lube, Inc. in a form reasonably acceptable to Buyer.

17. Bankruptcy Court Approval. The sole member of Seller, Tamara Jo Wade and the sole shareholder of Tenant, Terry Allen Wade have filed for protection under the United States Bankruptcy Court in case #05-18551-JRH. Buyer's obligation to close on this Agreement is expressly conditioned on approval of the United States Bankruptcy Court for the Western District of Michigan ("Court"). At Buyer's option, Buyer may elect, in Buyer's sole discretion, to file a motion with the Court for approval of this sale free and clear of liens or to request an abandonment of these assets by the Bankruptcy Trustee, Jeff Moyer.

18. Miscellaneous.

a. **Governing Law.** This Agreement is executed in accordance with, shall be governed by, and construed and interpreted in accordance with the laws of the State of Michigan.

b. **Entire Agreement.** This Agreement shall constitute the entire agreement, and shall supersede any other agreements, written or oral, that may have been made or entered into, by and between the parties with respect to the subject matter of this Agreement and shall not be modified or amended except in a subsequent writing signed by the party against whom enforcement is sought.

c. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the parties and their respective legal representatives, permitted successors and assigns.

d. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, and

all of which together shall constitute one and the same instrument. This Agreement shall become binding upon the parties when one or more counterparts, individually or taken together, shall bear the signatures of all parties.

e. **Non-Waiver.** No waiver by any party of any provision of this Agreement shall constitute a waiver by such party of such provision on any other occasion or a waiver by such party of any other provision of this Agreement.

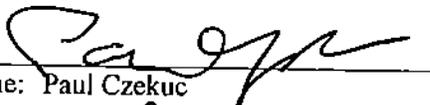
f. **Severability.** Should any one or more of the provisions of this Agreement be determined to be invalid, unlawful or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be impaired or affected.

g. **Assignment or Delegation.** Buyer may assign all or any portion of its rights and obligations contained in this Agreement.

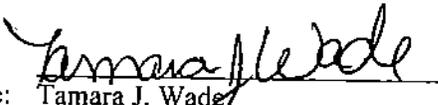
h. **Venue.** The parties agree that for purposes of any dispute in connection with this Agreement, the Muskegon County Circuit Court shall have exclusive personal and subject matter jurisdiction and venue.

i. **Survival of Representations and Warranties.** The representations, warranties, covenants and agreements contained in this Agreement and in any instrument provided for in this Agreement shall survive Closing and continue in full force and effect following closing.

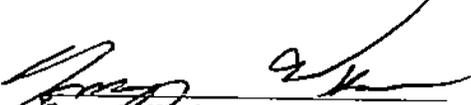
Buyer – Paul Czekuc

By: 
Name: Paul Czekuc
Date: March 9, 2006

Seller – Gabriel Properties, L.L.C.,
a Michigan limited liability company

By: 
Name: Tamara J. Wade
Title: Member
Date: March __, 2006

Tenant – Aleia, Ltd., a Michigan corporation

By: 
Name: Terry A. Wade
Title: President
Date: March __, 2006